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Paper No. 46

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AUG 25 2003

**OFFICE OF PETITIONS**

In re Application of :  
Koren et al. :  
Application No. 08/765,324 :  
Filed: December 24, 1996 :  
Attorney Docket No. OMRF 143 CIP (2) :

ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(a), filed August 1, 2003 (certificate of mailing date July 30, 2003), to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office Action of June 18, 2002, which set a reply period of (3) three Months from the mail date of the Notice. Accordingly, the application became technically abandoned on September 19, 2003. The Notice of Abandonment was mailed January 29, 2003.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. This petition does not satisfy requirement (1).

Regarding (1) above, petitioner is reminded that after a final Office action, there are only five possible replies: (1) a Notice of Appeal, (2) the filing of a continuing application, (3) a 37 CFR 1.129(a) submission, if appropriate, (4) an amendment after final that makes the case ready for allowance or (4) an RCE. To be a proper reply, an amendment after final must eliminate all of the Examiner's objections and rejections, and thus place the case in *prima facie* condition for allowance.

Primary Examiner Patricia A. Duffy has indicated that the reply filed August 1, 2003 (certificate of mailing date July 30, 2003) failed to place this application in *prima facie* condition for allowance.

Thus, this petition lacks a proper reply. Petitioner is encouraged to file a Notice of Appeal, a continuing application, or an RCE.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION  
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By facsimile: (703) 308-6916  
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Telephone inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

  
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